

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

14-1
AYER
23558

FILE: B-207706

DATE: November 9, 1982

MATTER OF: Northwest Biological Consulting

DIGEST:

1. Agency determination, after bid opening, that adequate funding is unavailable justifies cancellation of solicitation, notwithstanding dispute over validity of Government estimate.
2. GAO will not review agency determination that additional funding is unavailable to make up difference between funding allocated to project and protester's low bid in excess of allocated funds.
3. Where insufficient funds are available to award total quantity advertised, agency is not compelled to award less than the total amount of work solicited.
4. Claim for bid preparation costs is denied where agency action of canceling IFB for lack of funds is legally unobjectionable.

Northwest Biological Consulting (Northwest) has protested the cancellation of invitation for bids (IFB) No. R6-82-87C, issued by the Department of Agriculture, United States Forest Service, for fish habitat improvement on Dunn Creek in the Siskiyou National Forest. Northwest requests bid preparation costs in the event that its protest is not successful. We deny both the protest and the claim for bid preparation costs.

Northwest's \$9,999 low bid was greater than both the \$6,000 Government estimate and the \$7,000 available for funding the work. Following bid opening and recognition of the lack of funds, the Forest Service canceled the IFB.

Initially, Northwest questioned the realism of the Government cost estimate, contending that such an unreasonably low estimate (the bids ranged from 67 percent to

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217 percent over the estimate) probably resulted from a knowledge of the amount of funding available rather than an estimation of the true value of the work to be performed. However, after receiving the agency report, Northwest believes that the Government estimator merely failed to take into account the difficulty of establishing tiedowns (to hold the log weir structures in place) in a rocky stream bed.

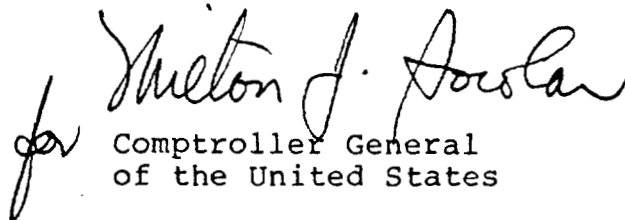
By way of remedy, Northwest would like the Forest Service to either make funding available or make a partial award up to the level of available funding. The record shows that the Forest Service estimate was prepared on the basis of its experience the preceding year on two similar projects which were constructed by Forest Service personnel. One project (Taylor Creek) contained 12 log weir structures which cost about \$800 each. The other (Onion Creek) contained eight log weir structures costing about \$500 each. The instant project (Dunn Creek) consists of 10 log weir structures estimated at \$600 each, but the low bid was approximately \$1,000 each. The Forest Service believed the current project should cost less than the Taylor Creek project for several reasons. At Taylor Creek, the Forest Service had to haul rip-rap approximately 7 miles to the weir sites, using dump trucks. There is no need to haul rip-rap on Dunn Creek. The Taylor Creek work also involved the use of a small D-4 cat and a front-end loader to clean up the English cabin site. The Forest Service believed that Taylor Creek should have been more expensive because a lot of extra time was used improving techniques and methods of installation. The extra time was necessitated by the zone engineers' lack of experience in this particular type of construction. On the other hand, the Forest Service recognized that a greater number of tiedowns would be required at Dunn Creek and that some bank preparation would be required on three of the 10 sites which was not necessary at Taylor Creek. We do not find this estimate unreasonable. Consequently, we cannot question the Forest Service decision to advertise for bids with \$7,000 in funds available to fund the project.

In any event, we have held that agencies have the right to cancel solicitations for lack of funds irrespective of disputes concerning the validity of Government estimates.

Somers Construction Company, Inc.--Reconsideration, B-193929, July 24, 1979, 79-2 CPD 54. Moreover, where an agency takes the position that it cannot obtain additional funding for the work after bid opening, that position is not subject to our review. Somers Construction Company, Inc., B-193929, April 24, 1979, 79-1 CPD 284. Finally, we agree with the Forest Service that it is not compelled to make an award for a lesser quantity than called for in the one line item in the solicitation where there are insufficient funds to award the total quantity. See Genco Tool and Engineering Co. (B-204582, March 1, 1982), 61 Comp. Gen. _____, 82-1 CPD 175.

A prerequisite to entitlement for reimbursement of bid preparation costs is arbitrary or capricious Government action with respect to a claimant's bid or proposal. Ramsey Canyon Enterprises, B-204516, March 15, 1982, 82-1 CPD 237. Since the cancellation was legally unobjectionable, the Forest Service cannot be found either arbitrary or capricious with respect to Northwest's bid and, consequently, Northwest is not entitled to bid preparation costs.

Accordingly, both the protest and the claim for bid preparation costs are denied.


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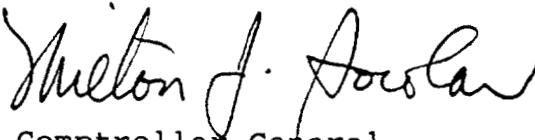
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